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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SIMA HADADY, Plaintiff and Appellant, v. REBECCA PARK et al., Defendants and Respondents.	B283354 (Los Angeles County Super. Ct. No. BC568172)

APPEAL from a judgment of the Los Angeles Superior Court, Elaine B. Mandel, Judge. Affirmed.

Law Offices of Burg & Brock, Cameron Y. Brock and Craig D. Rackohn for Plaintiff and Appellant.

Cleidin Z. Atanous and Raffalow, Bretoi & Adams, David E. Robinson for Defendants and Respondents.

* * * * * *

Sima Hadady (plaintiff) sued the driver who rear-ended her in stop-and-go traffic for nearly $1.7 million in damages. The jury awarded her $6,900. The trial court denied her post-verdict motion for a new trial, and plaintiff appeals that denial. We find no error in the trial court's ruling, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

During the morning rush hour on January 8, 2013, Rebecca Park (Park) rear-ended plaintiff as plaintiff waited at a stoplight. At the time of impact, Park was traveling at five miles per hour. The impact pushed plaintiff's car into the car stopped in front of her. The collision scratched up the front bumper and license plate of Park's car and damaged plaintiff's rear bumper and trunk, but the front end of plaintiff's car was not damaged and the third motorist did not claim any damages to his car.

II. Procedural Background

A. *Lawsuit*

Plaintiff sued Park and Wonsik Park, the owner of the car, for negligence.

B. *Trial*

Defendants conceded that Park negligently bumped into plaintiff's car, so the matter proceeded to trial solely on the issues of causation and damages. The ensuing trial boiled down to a credibility contest.

1. *Plaintiff and Park*

Plaintiff's and Park's accounts of what happened after the accident differed significantly.

Plaintiff testified that, immediately after the accident, she felt a burning sensation in her stomach, was nauseated and dizzy, could not stand up straight, and could not stop crying.

Soon thereafter, plaintiff testified that she felt debilitating pain in her neck and lower back that radiated into her arms and legs, that she had migraine headaches "almost every day," and that she became so anxious that she bit her fingernails below the quick. Plaintiff acknowledged that she had been in an accident the year before in which her car was totaled, but insisted that the prior accident had no effect on her health.

Park, on the other hand, testified that, immediately after the accident, plaintiff told both her and the third motorist that she was "fine" and not injured.

It was undisputed that plaintiff did not call the police or call for an ambulance after the accident and that she drove herself home.

2. *Battle of the experts*

The testimony of each party's experts also differed.

Plaintiff's expert testified that plaintiff, like most people in their forties, suffers from degenerative disc disease, a condition affecting the integrity of her spine and causing chronic pain. He opined that plaintiff's disease had no symptoms prior to the 2013 accident, and that the trauma plaintiff sustained in that accident caused her condition to become symptomatic. The expert further opined that the medical expenses plaintiff had thus far incurred (for MRIs, x-rays, various injections, and physical therapy) were reasonable and necessary, and laid out a course of future treatment that he opined was also reasonably necessary. In closing argument, plaintiff's attorney estimated these past and future medical expenses at $91,206.

Park called two experts—a radiologist and an orthopedic surgeon. Both agreed that plaintiff suffered from degenerative disc disease, but opined that (1) neither their clinical evaluations

nor the objective records explained plaintiff's subjective reports of pain, and (2) some of plaintiff's records indicated that she was already suffering from neck pain and migraine headaches prior to the 2013 accident. The experts conceded that the 2013 accident likely caused a number of sprains warranting short-term physical therapy, but opined that the full course of past and present treatment recommended by plaintiff's expert did not reasonably and necessarily flow from this accident.

In arriving at their respective conclusions, both parties' experts relied on and testified about plaintiff's medical records and medical bills, but the trial court ruled that it would not admit the records and bills themselves into evidence.[1]

C. *Verdict*

After plaintiff asked for $1,739,706 in damages, and Park argued that plaintiff was entitled to *at most* $9,900, the jury returned a verdict for plaintiff in the amount of $6,900.[2]

D. *New trial motion*

Plaintiff filed a new trial motion, arguing that the verdict was "against the law" because it rested on insufficient evidence and was the product of the trial court's mistaken ruling excluding plaintiff's medical records and bills; that the verdict awarded

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1 The initial discussion about this evidentiary ruling occurred at a hearing for which we have no transcript. The absence of this transcript, however, does not impede our analysis of the issues presented on appeal.

2 The jury initially returned a verdict of $5,900 in past medical expenses, but the court ordered the jury to continue deliberating to award some noneconomic damages. The jury returned with an additional $1,000 in noneconomic damages.

inadequate damages; and that the verdict was against the weight of the evidence.

The trial court issued a written ruling denying the motion. The court found its exclusion of the medical records and bills themselves (1) to be appropriate because they "contained much information that was *not* testified to" by the experts, and (2) not to be prejudicial because the experts were permitted to share with the jury all the "relevant contents of the records." With respect to the award of damages, the court ruled that it could "[n]ot conclude that the 'jury clearly should have reached a different verdict.'"

E. *Appeal*

Plaintiff filed this timely appeal.

DISCUSSION

On appeal, plaintiff argues that the trial court erred in denying her motion for a new trial because the court wrongly excluded the medical records and bills themselves, prompting the jury to award inadequate damages.

A trial court has the power to grant a new trial if the verdict is "against [the] law" or due to an "error in law" (Code Civ. Proc., § 657, subds. (6) & (7)), including an error in excluding evidence (e.g., *Townsend v. Gonzalez* (1957) 150 Cal.App.2d 241, 249-250). In deciding whether a trial court erred in excluding evidence or denying a new trial, we are limited to asking whether the court abused its discretion. (*People v. Clark* (2016) 63 Cal.4th 522, 586 [evidentiary ruling]; *Denton v. City and County of San Francisco* (2017) 16 Cal.App.5th 779, 794 [denial of new trial].)

The trial court did not abuse its discretion in allowing the experts to testify about the contents of plaintiff's medical records and bills while also excluding the records and bills themselves

from evidence. Although the records and bills were undoubtedly relevant (e.g. *Pebley v. Santa Clara Organics, LLC* (2018) 22 Cal.App.5th 1266, 1273-1276 ["medical bills are relevant and admissible to prove both the amount incurred and the reasonable value of medical services provided"]), the court allowed the experts to discuss the relevant portions (that is, the portions dealing with diagnosis, treatment and costs) and excluded the *full* records and bills because they contained "information . . . that [was] not testified to" and which, if admitted, would "allow the jury to speculate . . . [on] what . . . information might be contained in those records beyond that which was testified to by the" experts. This is an appropriate exercise of the court's power to exclude evidence when its "probative value" is "substantially outweighed by the probability that its admission will . . . create substantial danger of . . . confusing the issues, or of misleading the jury." (Evid. Code, § 352.) Moreover, the ruling is consistent with (1) the secondary evidence rule, since the "stack" of records and bills qualifies as "voluminous" both because it could not be examined in court "without great loss of time" and because the evidence sought "is only the general result of the whole" (Evid. Code § 1523, subds. (a) & (d); *Vanguard Recording Society, Inc. v. Fantasy Records, Inc.* (1972) 24 Cal.App.3d 410, 418-419), and (2) the hearsay rule, because the affidavits accompanying the records and bills sufficiently authenticated them (Evid. Code, §§ 1270-1271, 1560), thereby rendering their contents admissible for expert testimony (*ibid.*; *People v. Sanchez* (2016) 63 Cal.4th 665, 684, 686 [expert witnesses may relay case-specific facts in hearsay statements if they are "covered by a hearsay exception"]).

In her reply brief and at oral argument, plaintiff argued that *Sanchez* required the trial court to admit the medical records and bills because they provided the basis for the experts' opinions. To be sure, *Sanchez* held that experts may not relay inadmissible hearsay to the trier of fact when explaining the basis for their opinions. (*Sanchez, supra*, 63 Cal.4th at pp. 684, 686.) But *Sanchez* does not support plaintiff's position for two reasons. First, *Sanchez* still allows experts to relay hearsay evidence as long as that evidence is "covered by a hearsay exception" (*id.*, at p. 686; *People v. Perez* (2018) 4 Cal.5th 421, 456 [looking to whether evidence is "admissible under an applicable hearsay exception"]), even if it is not formally admitted into evidence. For the reasons noted above, the medical records and bills at issue here were admissible under the business records exception to the hearsay rule. Second, and more fundamentally, the remedy for non-compliance with *Sanchez*'s rule is exclusion of the expert's testimony, not mandatory admission of the hearsay evidence underlying that testimony. We therefore reject plaintiff's contention that *Sanchez* somehow overrides a trial court's discretion to admit or exclude evidence under section 352.

To the extent plaintiff argues that the jury's award of damages is inadequate or "against the law"—separate and apart from the court's exclusion of the medical records and bills—that argument also lacks merit. When assessing whether a jury's award of damages is inadequate, the court sits as a "thirteenth juror" and is free to reweigh the evidence. (*Licudine v. Cedars-Sinai Medical Center* (2016) 3 Cal.App.5th 881, 900; Code Civ. Proc., § 657, subd. (5).) When assessing whether a jury's award of damages is against the law, the court asks only whether the award is supported by substantial evidence. (*Sanchez-Corea v.*

Bank of America (1985) 38 Cal.3d 892, 906.) Our review of the court's thirteenth-juror finding or the jury's verdict is solely for substantial evidence (*id.* at 907; *People v. Lindsey* (1951) 105 Cal.App.2d 463, 465), requiring us to construe the evidence in the light most favorable to that finding or verdict. (*Toste v. CalPortland Construction* (2016) 245 Cal.App.4th 362, 366.) Through this lens, we have no reason to overturn the trial court's finding or the jury's verdict. This case was essentially a credibility contest, and plaintiff has not presented any basis for us to disagree with the jury's or trial court's credibility calls.

DISPOSITION

The judgment is affirmed. Park is entitled to her costs on appeal.

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_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST